IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9769 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMKUMAR BHAGIRATH

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. R.S. Sanjanwala for the petitioner and learned AGP Mr. A.J. Desai for the respondents nos.1, 2 and 3.

1. The petitioner-Ramkumar Bhagirath has filed the present petition under Article 226 of the Constitution to challenge the detention order dated 18-5-1999 passed against his brother-Shitalaprasad alias Gorelal Bhagirath by the respondent no.2-Commissioner of Police, Surat in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that Criminal Case bearing no.45/99 was registered at Umrao Police Station against the detenu on 13-1-1999 in respect to offences punishable under Secs.393, 397, 307 of the Indian Penal Code and Sec.25(1) of the Arms Act. That the detenu was arrested on 14-1-1999 and was released on bail on 27-1-1999.

2.1 The grounds further indicate that two witnesses on assurance of their annonymity have related alleged incidents dated 2-3-1999 and 19-3-1999 respectively. That the said statements were verified by the detaining authority on 17-5-1999.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the detenu is a " dangerous person" within the meaning of Sec.2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activity, the detention order is necessary, and hence, the impugned order is passed.

4. The petitioner has challegned the impugned order on numerous grounds. It is contended on behalf of the petitioner that as the inordinate delay which has occasioned between the last date of criminal activity of the detenu and the date on which impugned action is taken, is not satisfactorily explained, the detention order is bad in law.

5. It may be noted that despite due service of rule, none of the respondents has filed any affidavit to controvert the averments made in the petition.

6. In the matter of PRADEEP NILKATNH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656) having followed the earlier decisions, the Supreme Court has held that if the delay in taking the impugned action from the last date of antisocial activity of the detenu is not

sufficiently explained the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELESH PATEL VS.C.P. AHMEDABAD reported vide 1997(1) G.L.H.381.

7. In the instant case, Criminal Case vide Cr no.45/99 is registered against the petitioner on 13-1-1999. That the petitioner was released on bail on 27-1-1999 and despite information supplied by anonymous witnesses vide their statements dated 2-3--1999 and 19-3-1999, the impugned order appears to have been passed on 18-5-1999. The grounds of detention is devoid of any explanation regarding said delay and in absence of any affidavit-in-reply there is no satisfactory explanation. Under the circumstances, as the live link between the alleged antisocial activity and the impugned action taken having been snapped, it is difficult to uphold the order.

8. As the petition succeeds on the aforesaid ground alone it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 18-5-1999 passed by the respondent no.2 against the detenu is hereby quashed and set aside. The detenu-Shitalaprasad alias Gorelal Bhagirath is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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